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**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEVADA**

CORRIE GITA,

Plaintiff,

CASE NO. 3:20-CV-00252-MMD-BNW

v.

C. R. BARD, INC.; BARD PERIPHERAL  
VASCULAR, INCORPORATED,

Defendants.

**PROPOSED STIPULATED PROTECTIVE ORDER**

The Parties, through their respective counsel, stipulate to the entry of a protective order to govern the dissemination of documents, materials, and other information, including the substance and content thereof, designated by any party as confidential and produced by any party in support of motions, in response to written discovery, or during any formal or informal discovery in this litigation subject to the terms as set forth below.

**WHEREAS**, the parties to this action, through their respective counsel, have agreed that a protective order preserving the confidentiality of certain documents and information should be entered by the Court.

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**THEREFORE, IT IS ORDERED** as follows:

## I. Definitions

1. **Confidential Information.** “Confidential Information” is defined herein as any information that constitutes, reflects, discloses, or contains: (1) a “trade secret or other confidential research, development, or commercial information” that is suitable for protection under Federal Rule of Civil Procedure 26(c)(1)(G); and (2) information that may be protected from disclosure under a party’s constitutional right of privacy such as confidential and private psychiatric, psychological, medical condition and/or employment information.

2. **Trade Secret.** A party, in designating information “Confidential” because it contains a “Trade Secret,” shall designate only information that meets the definition of trade secret contained in 18 U.S.C. § 1839:

the term "trade secret" means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if –

(A) the owner thereof has taken reasonable measures to keep such information secret; and

(B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public.

3. **This Action.** “This Action” means *Corrie Gita v. C. R. Bard, Inc., et al.*, Case No. 3:20-cv-00325-MMD-BNW, pending in the United States District Court District of Nevada.

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1       **II. Information Within the Scope of the Protective Order**

2       4.       This Protective Order shall govern all hard copy and electronic materials, the  
 3 information contained therein, and all other information produced or disclosed during This  
 4 Action, including all copies, excerpts, summaries, or compilations thereof, whether revealed  
 5 in a document, deposition, other testimony, discovery response or otherwise, by any party to  
 6 This Action or its representatives (the “Supplying Party”) to any other party or parties to This  
 7 Action or their representatives (the “Receiving Party”), whether provided voluntarily,  
 8 pursuant to formal discovery procedures, or otherwise. The Parties agree that confidentiality  
 9 of materials at trial will be determined by the Court after a separate briefing and/or argument  
 10 process.

11       5.       The scope of confidentiality protections afforded under this Protective Order  
 12 does not include any trial exhibits or trial testimony entered into evidence during the case  
 13 known as *Phillips v. C. R. Bard, Inc., et al.*, No. 3:12-cv-00344-RCJ-WGC (D. Nev. June 1,  
 14 2015), as to which that Court entered an Order denying Bard’s motion to seal trial exhibits  
 15 and trial transcripts.

16       In addition, this Protective Order does not apply to any document that was admitted  
 17 into evidence during the three MDL Bard IVC filter bellwether cases *In Re: Bard IVC Filters*  
 18 *Products Liability Litigation, MDL 2641*, listed in the MDL Court’s Suggestion of Remand  
 19 and Transfer Order (Second), Dkt. No. 3 (Exhibit 2 – Admitted Exhibit List from Bellwether  
 20 Trials and Documents No Longer Subject to Protective Order). To the extent only a portion  
 21 of a document was admitted, only that portion of the document that was admitted shall not be  
 22 subject to protection.

23       Notwithstanding the foregoing, this Protective Order does not address or alter whether  
 24 or not Defendants may argue that non-confidential documents should still be entitled to  
 25 protection under the work-product doctrine and/or the attorney-client communication  
 26 privilege.

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1       **III. Designating Information As “Confidential” Pursuant to This Protective Order**

2       6.       **Documents.** Any Supplying Party producing documents that contain  
 3 information that meets the definition of Confidential Information as provided in Paragraphs 1  
 4 and 2 herein, may designate the contents of the documents as “Confidential” prior to or at the  
 5 time of production by placing the following designation on the documents:  
 6 “CONFIDENTIAL – Subject to Protective Order.” Where a document consists of more than  
 7 one page, each page of the document shall be designated as such. Any document or  
 8 information for which it is impracticable or impossible to affix such a legend may be  
 9 designated by written notice to that effect with a reasonable description of the material in  
 10 question including a BATES number, where applicable.

11      7.       **Inspection.** If a Supplying Party makes documents or information available for  
 12 inspection, rather than delivering copies to another party, no “Confidential” designation is  
 13 required in advance of the initial inspection. For the purposes of initial inspection only, the  
 14 documents shall be considered “CONFIDENTIAL.” Upon production of the inspected  
 15 documents, the Supplying Party shall designate which of the produced or copied documents  
 16 and materials are or contain Confidential Information pursuant to Paragraph 6 of this Order.

17      8.       **Written Discovery.** If responses to written discovery contain Confidential  
 18 Information as defined in Paragraph 1 and 2 of this Protective Order, the Responding Party  
 19 may designate the responsive documents and information, as set forth in Paragraph 6, with  
 20 specific indication of the page and line references of the material that is “Confidential” under  
 21 the terms of this Protective Order.

22      9.       **Depositions.** The parties may designate as Confidential any deposition  
 23 transcript, or portions thereof, in This Action that meets the definition of Confidential  
 24 Information provided in Paragraphs 1 and 2 of this Protective Order. Counsel for the  
 25 designating party shall advise the court reporter and the parties on the record during the  
 26 deposition or by letter no later than thirty (30) calendar days after the court reporter provides  
 27 the parties with the final deposition transcript. If any portion or all of a deposition transcript  
 28 is designated as Confidential Information, the court reporter shall label the cover page of the

1 original and one copy of the transcript to state that Confidential Information is contained  
 2 therein, and shall label as “Confidential” each page of the transcript and/or exhibits to the  
 3 deposition transcript that constitute “Confidential Information.” Confidential designations of  
 4 transcripts or portions thereof, apply to audio, video, or other recordings of the testimony. The  
 5 court reporter shall clearly mark any transcript or portion thereof prior to the expiration of the  
 6 30-day period as “DO NOT DISCLOSE – SUBJECT TO FURTHER CONFIDENTIALITY  
 7 REVIEW.” Deposition transcripts or portions thereof will be treated as Confidential  
 8 Information until expiration of the 30-day period. If any party does not designate the  
 9 transcript as “Confidential” either at the time of the deposition or within the 30-day period  
 10 defined above, no portion of the entire transcript will be deemed “Confidential” and the “DO  
 11 NOT DISCLOSE- SUBJECT TO FURTHER CONFIDENTIALITY REVIEW” legend shall  
 12 be removed. The 30-day period may not be extended without mutual agreement of the parties.

13       10. **Confidential Information Produced by Third Parties.** A party in This  
 14 Action may designate as Confidential any document, information, or testimony produced or  
 15 supplied by any person or entity not a party to This Action, that constitutes or meets the  
 16 definition of Confidential Information as defined in Paragraphs 1 and 2 of this Protective  
 17 Order. The party claiming confidentiality shall designate the information as such within thirty  
 18 (30) days of its receipt of such information. Any party receiving information from a third  
 19 party shall treat such information as Confidential Information during this thirty (30) day  
 20 period while all parties have an opportunity to review the information and to determine  
 21 whether it should be designated as confidential. Any party designating third party information  
 22 as Confidential Information shall have the same rights, duties, and obligations, as a Supplying  
 23 Party under this Protective Order.

24       11. **Publicly Available Information.** The confidentiality restrictions and  
 25 confidentiality obligations set forth herein shall not apply to information that is at the time of  
 26 production or disclosure, or subsequently becomes, through no wrongful act on the part of the  
 27 Receiving Party, generally available to the public through publication or otherwise. This  
 28 includes information published during public hearings and trials, if the Supplying Party does

1 not move to seal or appeal any order denying such motion to seal within the time permitted  
 2 under the applicable rules. Notwithstanding the foregoing, this Protective Order does not  
 3 address or alter whether or not Defendants may argue that non-confidential documents should  
 4 still be entitled to protection under the work-product doctrine and/or the attorney-client  
 5 communication privilege.

6 **IV. Limitations on Use of Confidential Information**

7 12. All Confidential Information shall be used for the purpose of this lawsuit only,  
 8 and except as permitted by this Order, the parties and their respective attorneys, as well as  
 9 experts or consultants, shall not give, show, or otherwise divulge or disclose the Confidential  
 10 Information, or any copies, prints, negatives or summaries thereof to any person or entity.  
 11 Notwithstanding the foregoing provisions of this paragraph, nothing in this Order shall  
 12 prevent the use of any of the documents or electronically stored information (“ESI”) produced  
 13 pursuant to this Protective Order in other actions brought by the plaintiff’s counsel, so long  
 14 as a comparable protective order is entered in those other actions.

15 13. Confidential Information pursuant to this Protective Order shall be treated by  
 16 the parties, their counsel, and any other signatory to this Protective Order as being confidential  
 17 and private. Any copy of Confidential Information shall have the same status as the original.  
 18 The disclosure and use of Confidential Information shall be confined to the permissible  
 19 disclosures and uses set forth in this Protective Order, and no one shall disclose or use  
 20 Confidential Information in a manner inconsistent with the terms and the intent of this  
 21 Protective Order.

22 14. Confidential Information may be disclosed only to the following persons and  
 23 shall be used solely for the litigation of This Action and may not be disclosed to anyone not  
 24 authorized under this paragraph:

25 a. Parties, their representatives, in-house counsel and regular  
 26 employees who are actively engaged in, or actively overseeing This Action;

27 b. Counsel of record, their associated attorneys, and support staff,  
 28 including paralegal and secretarial personnel who are working on This Action;

c. Experts and consultants (including their employees/contractors) who are consulted or retained by a party to assist in the litigation of This Action;

d. Third-party contractors and their employees who are consulted or retained by one or more parties to provide litigation-support or copy services in connection with the litigation of This Action

e. Witnesses or prospective witnesses in This Action;

f. Court reporters, videographers, and other persons involved in recording deposition testimony in This Action;

g. The Court and its personnel, including any mediators and/or special masters appointed by the Court, or if an appeal, the court with appellate jurisdiction; and

h. **Jurors in This Action.**

15. Prior to the disclosure of any Confidential Information to any person identified in Paragraph 14 above (except the Court and its personnel and jurors in This Action), the disclosing party will provide each potential recipient of Confidential Information with a copy of this Protective Order, which said recipient shall read. Upon reading this Protective Order, such person shall sign an Agreement to Maintain Confidentiality (“Confidentiality Agreement”), attached to this Order as **Exhibit A**, acknowledging that he or she has read this Protective Order and shall abide by its terms. Notwithstanding the foregoing provision, Confidential Information may be disclosed to a witness who will not sign an Confidentiality Agreement in a deposition at which the party who has designated the Confidential Information is represented or has been given notice that Confidential Information produced by the party may be used. These Confidentiality Agreements are strictly confidential and shall be maintained by counsel for each party and only with good cause shown and separate court order will the Confidentiality Agreements be disclosed to the opposing side. Persons who come into contact with Confidential Information for clerical or administrative purposes, and who do not retain copies or extracts thereof, are not required to execute Confidentiality Agreements but must comply with the terms of this Protective Order.

1       16. All persons receiving or given access to Confidential Information in accordance  
2 with the terms of this Order consent to the continuing jurisdiction of this Court for the  
3 purposes of enforcing this Order and remedying any violations thereof.

4       17. Confidential Information shall not be placed or deposited in any sort of data  
5 bank that is made available for indiscriminate or general circulation to lawyers, litigants,  
6 consultants, expert witnesses or any other persons not working on This Action and not  
7 signatories to this Protective Order. This paragraph and the other provisions of this Order  
8 shall not apply to materials which, if challenged by any party, the Court rules are not entitled  
9 to protection. This paragraph does not limit or restrict in any way the manner in which a party  
10 may store and make Confidential Information available to the attorneys, support staff, experts,  
11 and any other persons or entities working on This Action, provided the general terms of this  
12 Order are followed.

13       18. The parties and their counsel as well as their technical consultants and experts  
14 shall also not sell, offer, advertise, publicize nor provide under any condition any Confidential  
15 Information produced by any other party to any competitor of any defendant or to any  
16 employee or any competitor (irrespective of whether they are retained as an expert by a party  
17 in This Action).

18       19. In the event that either of the parties is served by a non-party with a subpoena  
19 for Confidential Information that was originally provided and claimed as Confidential by  
20 another party, the Receiving Party will give notice to the Supplying Party, where reasonably  
21 possible, no less than ten (10) business days prior to disclosure by providing a copy of the  
22 subpoena, to allow a reasonable opportunity for the Supplying Party to object to such  
23 production before any production takes place.

24       20. If a Receiving Party learns of any unauthorized disclosure of Confidential  
25 Information, it shall take reasonable efforts to immediately (a) inform the Supplying Party in  
26 writing of such disclosure, including to whom the material was disclosed; (b) make a  
27 reasonable effort to retrieve all copies of the Confidential Information only to the extent the  
28 Receiving Party has control over the unauthorized disclosed documents; (c) and to the extent

1 the Receiving party has control over the person or persons to whom unauthorized disclosures  
 2 were made, inform the persons of the terms of this Protective Order.

3 **V. Changes in and Objections to Designation of Information**

4       21.     **“Clawback” of Irrelevant Confidential Information.** If a Supplying Party  
 5 produces any document containing Confidential Information that they identify to the  
 6 Receiving Party as irrelevant, the Supplying Party may notify the Receiving Party of the  
 7 Irrelevant Confidential Information in writing. If a portion of the document contains  
 8 information relevant to This Action, the Supplying Party shall also supply the Receiving Party  
 9 with a new copy of the document which shall be substituted for the earlier produced document.  
 10 Upon receipt of the substitute document, the Supplying Party shall promptly return or destroy  
 11 the earlier produced document. Upon receipt of the Supplying Party’s written notice, the  
 12 Receiving Party shall, within a reasonable time, not exceed twenty (20) days, (a) treat such  
 13 material in accordance with this Order; (b) take reasonable steps to notify any person to whom  
 14 the Receiving Party disclosed such information of the new confidential designation; (c) take  
 15 reasonable steps to procure the return of all copies of such material from any such persons  
 16 who are not entitled to receipt of Confidential Information under the terms of this Protective  
 17 Order; (d) request in writing that such person procure the return of such information from any  
 18 person to whom such person may have disclosed the information.

19       22.     **Challenges to Designation of Confidential Information.** A Receiving Party  
 20 may challenge a Supplying Party’s designation or re-designation by notifying the Supplying  
 21 Party in writing that the confidentiality designation does not meet the definition of  
 22 “Confidential Information.” The designation by any party of Confidential Information raises  
 23 no presumption that the information or documents are entitled under the law to protection. If  
 24 any party contends, in writing, that any document, material, ESI, or other thing has been  
 25 erroneously designated as Confidential Information, the party who designated the information  
 26 as Confidential Information shall initiate a meet and confer within ten (10) days with the  
 27 opposing party and the parties shall make a good faith effort to resolve issues relating to such  
 28 designations. After the meet and confer, the party who designated the information as

1 Confidential Information shall file a motion with the Court within thirty (30) days of receiving  
 2 such written notification establishing that the information is entitled to protection as  
 3 Confidential Information under the law. If the designating party fails to timely file such a  
 4 motion within the allotted thirty (30) day period, the document, ESI, material, or other thing,  
 5 which is designated as Confidential Information, shall forthwith be produced and be deemed  
 6 not to be Confidential Information. Any information or thing being challenged as  
 7 inappropriately designated as Confidential Information shall nonetheless be treated as  
 8 Confidential Information unless and until either (a) the designating party gives written  
 9 permission to do otherwise, (b) the designating party fails to file a motion establishing that  
 10 the challenged material is subject to protection as Confidential Information under the law  
 11 within the thirty (30) day time period, or (c) the Court rules that the document, material, ESI,  
 12 or other thing shall not be treated as confidential. Should the Court rule that any item  
 13 designated as Confidential Information is not entitled to protection under the law, the  
 14 designating party shall, within fourteen (14) days after all appeals are exhausted, provide the  
 15 party challenging the confidential designation with copies of each item free of any language  
 16 indicating that the item is subject to a Protective Order. A Receiving Party shall only challenge  
 17 documents under this Paragraph that they have a good faith basis for using in This Action.

18       23. Nothing in this Protective Order shall be deemed to shift the burden of proof to  
 19 the party challenging the confidential designation with regard to whether the materials  
 20 produced pursuant to this Protective Order are entitled to protection under the law as  
 21 Confidential Information.

22 **VI. Filing Under Seal**

23       24. **Where a Party Files Documents and Contends the Documents Should be  
 Kept Sealed.** Where a party intends to file documents that contain Confidential Information  
 25 with the Court, said party must file a motion for an order sealing the documents consistent  
 26 with applicable law and comply with the provisions of FRCP 5.2 and LR IC 6-1 of the local  
 27 rules. A copy of the motion must be served on all parties that have appeared in the case.

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1                   **25. Where a Party Files Documents Claimed as Confidential by Another Party.**

2                   A party that files or intends to file with the Court Confidential Information produced by  
3                   another party but does not intend to request to have the records sealed, must do the following:

4                   a.        Make arrangements consistent with FRCP 5.2 and LR IC 6-1 of  
5                   the local rules to lodge the documents under seal.

6                   b.        File redacted copies of the documents (if appropriate) so that they  
7                   do not disclose the contents of the records that are subject to the confidentiality  
8                   agreement or protective order;

9                   c.        Serve a copy of the motion on all parties that have appeared in the  
10                   case; and

11                   d.        Give written notice to the party that produced the documents that  
12                   the documents will be placed in the public court file unless the party files a  
13                   timely motion to seal records.

14                   If the party that produced the Confidential Information and was served with the  
15                   abovementioned notice fails to file a motion to seal the records within fifteen (15) days of  
16                   receipt of the notice referenced in Subparagraph 25.d. or to obtain a court order extending the  
17                   time to file such motion, the clerk must promptly remove all the documents filed under seal  
18                   pursuant to this provision from the envelope or container where they are located and place  
19                   them in the public file. If the party files a motion or an application to seal within fifteen (15)  
20                   days of receipt of the notice referenced in Subparagraph 25.d. days or such later time as the  
21                   Court has ordered, these documents are to remain conditionally under seal until the Court  
22                   rules on the motion or application and thereafter are to be filed as ordered by the Court.

23                   This section shall not apply with respect to documents admitted into evidence as  
24                   exhibits at the trial of this matter. The Supplying Party reserves the right, however, to petition  
25                   the Court for protection with respect to such documents admitted into evidence as exhibits at  
26                   trial.

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1        **VII. Miscellaneous Provisions**

2        **26. Amending or Modifying Protective Order.** By written agreement of the  
 3 parties, or upon motion and order of the Court, the terms of this Protective Order may be  
 4 amended or modified. This Protective Order shall continue in force until amended or  
 5 modified by consent or agreement of the parties or by order of the Court, and shall survive  
 6 any final judgment or settlement in This Action, including but not limited to any final  
 7 adjudication of any appeals petitions for extraordinary writs, unless otherwise vacated or  
 8 modified by the Court. The Court shall have continuing jurisdiction over the terms and  
 9 provisions of this Protective Order.

10        **27. After Final Adjudication.** Upon written demand by the Supplying Party made  
 11 within thirty (30) days after final adjudication of This Action, including but not limited to,  
 12 any final adjudication of any appeals and petitions for extraordinary writs, the Receiving Party  
 13 shall assemble and return all Confidential Information to the Supplying Party or, alternatively,  
 14 shall destroy all such material at the Supplying Party's expense. The Receiving Party shall  
 15 verify the complete destruction or return to the Supplying Party all such Confidential  
 16 Information by executing and mailing to counsel for the Supplying Party an Acknowledgment  
 17 in the form attached hereto as **Exhibit B**. A copy of each such executed Acknowledgment  
 18 shall be maintained by counsel for the Receiving Party and counsel for the Supplying Party.  
 19 Notwithstanding the foregoing provisions of this paragraph, the Receiving Party may  
 20 maintain its privileged communications, work product, Confidentiality Agreements and  
 21 Acknowledgments pursuant to the Protective Order, materials required to be retained pursuant  
 22 to applicable law, and all court-filed documents even though they contain Confidential  
 23 Information, but such materials shall remain subject to the terms of this Protective Order.  
 24 This provision may not be invoked while the plaintiff's attorneys of record have active  
 25 pending cases relating to IVC Filters manufactured by C. R. Bard, Inc. and/or Bard Peripheral  
 26 Vascular, Inc.

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1       28. The terms of this Protective Order do not preclude, limit, restrict, or otherwise  
 2 apply to the use of Confidential Information at trial. The use of Confidential Information  
 3 during trial will be addressed in a later agreement between the parties, or, if they cannot reach  
 4 an agreement, by further order of the Court.

5       29. Nothing in this Order shall be deemed a waiver of any parties' right to oppose  
 6 any motion by any other party for a protective order or to oppose any objection to the  
 7 disclosure of any information or documents on any legal grounds, including, but not limited  
 8 to, the grounds that the party seeking the protective order has neither timely nor adequately  
 9 objected to disclosure of such documents and information or moved for a protective order.

10       30. This Protective Order does not relieve any party of its obligations to respond to  
 11 otherwise proper discovery in This Action. Nothing contained in this Order, or any action  
 12 taken pursuant to it shall waive or impair any party's right to assert claims of privilege or  
 13 work product protection, or the right of any party to object to the relevancy of admissibility  
 14 of documents or information sought or produced into assert objections to requested discovery  
 15 on grounds other than Confidential Information. This Protective Order also shall not affect  
 16 or create any presumption with respect to the right of any party from seeking or obtaining  
 17 additional protection with respect to any documents, materials, or information where allowed  
 18 by law.

19       31. **Electronically Stored Information (“ESI”) Document Production Review  
 20 Process.** To expedite document production of ESI from Defendants, the parties, through  
 21 their respective counsel, have agreed to a primarily “no-eyes-on” document production as to  
 22 relevancy while still performing a privilege review for ESI which Defendants will be  
 23 producing subsequent to this Protective Order. The Parties recognize that a substantial portion  
 24 of the documents that will be produced in This Action were initially produced in *In re: Bard*  
 25 *IVC Filters Products Liability Litigation*, MDL No. 2641, in the United States District Court  
 26 District of Arizona (“IVC Filter MDL”), pursuant to a “no-eyes-on” document production as  
 27 to relevancy in order to expedite production in the MDL. As a result, the Receiving Party  
 28 agrees to make a good faith effort to apply the terms of this Protective Order consistent with

1 that production. The Parties further agree that any additional document productions in This  
 2 Action may be made pursuant to this “no-eyes-on” review/ESI production process (the  
 3 “Process”).

4       32. The Parties and their counsel agree to the entry of the Protective Order in This  
 5 Action, and to the Process, which shall govern the production of documents, materials, and  
 6 other information, including the substance and content thereof; and use of any such  
 7 documents, materials, and other information during discovery, in conjunction with court  
 8 filings or hearings, during any other pre-trial activity, and during trial. The Parties and their  
 9 counsel have also agreed that all ESI produced by Defendants pursuant to the Process will be  
 10 subject to the following terms:

11       a. At the time of production, Defendants will identify the documents  
 12 or ESI as being produced pursuant to the Process and subject to the restrictions  
 13 of this Paragraph (the “Process ESI”).

14       b. Nothing in this Protective Order shall prevent the use of any  
 15 Process ESI in other actions brought by the Plaintiff’s counsel, so long as a  
 16 substantially comparable protective order is entered in those other actions.

17       c. Prior to using any document or ESI from the Process ESI as part  
 18 of a filing, at a deposition, or at a trial or hearing in this matter, Plaintiffs shall  
 19 make a good faith effort to identify whether the document or ESI contains any  
 20 information that is subject to redaction under Paragraphs 33-34 (“Redaction  
 21 Requirements”) of this Protective Order and corresponding **Exhibit C**  
 22 (“Redaction Protocol”) and to redact any such information in accordance with  
 23 this Order and redaction protocol.

24       d. Defendants shall independently have the right to identify any  
 25 documents or ESI from the Process ESI, including documents identified by  
 26 Plaintiffs pursuant to Subparagraph 32.c. above, as subject to the Redaction  
 27 Requirements and Redaction Protocol and to require the redaction of the  
 28 information set forth therein; in that event, Defendants shall provide Plaintiffs

1 with a redacted version of the subject documents or ESI with the same  
2 production Bates number(s) and Plaintiffs shall destroy any unredacted copies  
3 or versions of the document that they possess.

4 e. Defendants shall have the right to identify any document, file, or  
5 other form of ESI produced pursuant to the Process as both being irrelevant to  
6 the matters in dispute in this case and containing trade secret or other  
7 confidential information and to “claw back” such ESI or documents from the  
8 production. After Plaintiffs use a document or ESI from the Process ESI as part  
9 of a filing, at a deposition, or at a trial or hearing in this matter, Defendants shall  
10 have 30 days to seek claw back of the particular document pursuant to this  
11 Paragraph; this latter requirement does not apply to Process ESI that has not been  
12 used by Plaintiffs as part of a filing, at a deposition, or at a trial or hearing in this  
13 matter, which may be clawed back at any time.

14 f. Plaintiffs shall have the right to challenge any designation or claw  
15 back by Defendants under Subparagraphs 32.d. or 32.e. above by submission of  
16 the ESI or document to the Court under seal, and any filings that refer to the  
17 protected substance of the ESI or document must, likewise, be made under seal.

18 g. Non-Waiver of Privilege

19 i. The production in This Action, use in This Action, or any  
20 other disclosure in This Action of the substance or content of documents,  
21 materials, or other information that is protected by the attorney-client  
22 privilege, work-product protection, or any other privilege or protection  
23 shall not amount to waiver of the privilege and/or protection in This  
24 Action, or in any other federal or state proceeding, and Plaintiff and  
25 Plaintiff’s counsel stipulate that they will not argue in any other action or  
26 proceeding, whether in federal or state court, that the production, use, or  
27 other disclosure of such documents, materials, or other information in  
28 This Action constitutes waiver of the privilege or protection.

- ii. If the Receiving Party identifies a document, material, or other information that reasonably appears to be protected by any privilege or other protection, they shall promptly notify the Supplying Party in writing. If the Supplying Party determines that the document, material, or other information is privileged or otherwise protected, it shall make such an assertion in writing within 30 days of receipt of notification. After being notified, the Receiving Party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. Failure to assert the privilege or protection within 30 days of receipt of notification shall amount to waiver of any privilege or protection only of the document, material, or other information identified in the notification.

Unless waived under subsection (ii) above, at any time, a party that produces any document, material, or other information that it believes to be protected by the attorney-client privilege, work-product protection, or any other privilege or protection may assert the privilege or protection in writing. After being notified, the Receiving Party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim.

h. To the extent that the documents or ESI produced pursuant to the Process contain any adverse event reporter names or information of a patient who is not a party to this litigation and which would otherwise be redacted in accordance with the Redaction Requirements of this Protective Order, Plaintiffs

1 and their counsel and agents shall not contact the patient or reporter of an adverse  
 2 event unless and until the parties go through the processes outlined in  
 3 Subparagraphs 32.e. and 32.g. above with respect to redaction of information  
 4 and this Court determines the information is not subject to redaction.

5 **33. Redaction of Adverse Event Reporter, HIPAA, and Other Information**

6 **Pursuant to Exhibit C.** Defendants have produced in the IVC Filter MDL and may produce  
 7 in This Action additional and updated adverse event reports and complaint files maintained  
 8 pursuant to 21 U.S.C. § 360i, 21 C.F.R. § 803.18 and 21 C.F.R. § 820.1-250, as well as  
 9 documents relating to those adverse events and complaint files. To the extent that Defendants  
 10 are able to identify whether these reports and complaint files relate to the Plaintiff at the time  
 11 they are produced in This Action, the parties and their respective counsel have consented to  
 12 and agreed that the Defendants shall refrain from redacting identifiable information of the  
 13 Plaintiff in this litigation, pursuant to 21 C.F.R. § 20.63(f)(1)(iii). Otherwise, in accordance  
 14 with 21 C.F.R. § 20.63(f) and other applicable laws, statutes, and regulations, the Defendants  
 15 shall only redact such information as is set forth in the agreed Redaction Protocol attached to  
 16 this Protective Order as **Exhibit C**, and Plaintiff shall have the right to object to any redactions  
 17 made.

18 The parties acknowledge that this Stipulated Order is intended to and does satisfy the  
 19 written consent requirement of the federal regulations.

20 a. Any documents containing any reporter or personal identifying  
 21 information shall be designated and branded as confidential in accordance with  
 22 this Order. To the extent that any adverse event reporter information or patient  
 23 information belonging to any individual or entity who is not a party to this  
 24 litigation is disclosed, because such information is not required to be redacted in  
 25 accordance with this Protective Order (see Paragraph 29-30), the Receiving  
 26 Party and their counsel and agents shall not contact the patient or reporter  
 27 involved in an adverse event.

28 / / /

b. Any additional documents or ESI Defendants produce in This Action will be produced subject to this Order and marked Confidential. Thus, any documents or ESI containing any adverse event reporter, personal identifying information, or any other information protected from disclosure as described in **Exhibit C** shall continue to be treated as confidential in accordance with this Order.

7       34. If the Receiving Party intends to file with the Court, use at a deposition, or  
8 otherwise disclose a document to a nonparty (consistent with the terms of this Order), the  
9 Receiving Party shall make a good faith effort to redact that document consistent with  
10 **Exhibit C** prior to such disclosure. After such filing or other use, the Supplying Party shall  
11 have fifteen (15) days to provide the Receiving Party with an amended copy of the document  
12 with any additional redactions it deems necessary pursuant to **Exhibit C**. If an amended copy  
13 is provided, the Receiving Party will ensure that the original copy is replaced with the  
14 amended copy in the court filing or deposition.

15        35. Each party shall retain all rights and remedies available to it under the law for  
16 the enforcement of this Protective Order against anyone who violates it.

17       36. Nothing in this Protective Order shall be construed to prevent this Court from  
18 disclosing any facts the Court relies upon in making any findings or issuing any ruling, order,  
19 judgment, or decree.

20       37. Within thirty (30) days of any information that has been claimed as Confidential  
21 Information being de-designated or made publicly available, the Supplying Party shall  
22 provide notice of the Confidential Information that has been de-designated and/or made  
23 publicly available. Such notice shall be made by identifying bates numbers or by other means  
24 such as identifying categories of information where the identification of bates numbers are  
25 not possible or not feasible. Publicly available includes documents that have been filed with  
26 any court or entered as an exhibit during trial not under seal, provided, however that the  
27 Supplying Party is not required to provide notice of de-designation with regard to such  
28 documents until any motion or request to seal those documents is denied.

1           This paragraph only applies to the extent that the Supplying Party knew or should have  
2 known that the information claimed as Confidential Information was de-designated or made  
3 publicly available.

4           Respectfully submitted this 27th day of May 2020.

5           WENDT LAW FIRM, PC

6           By: /s/ Samuel M. Wendt

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30           Counsel for Defendants

31           Counsel for Plaintiff

32           IT IS ORDERED that ECF No. 24  
33           is GRANTED except to the extent  
34           it is inconsistent with the following:

35           IT IS ORDERED that when a  
36           movant files documents under  
37           seal pursuant to Paragraph 25,  
38           they must (1) simultaneously file a  
39           notice with the court that they  
40           have filed the documents under  
41           seal pursuant to this Order; and  
42           (2) after 15 days, file a notice that  
43           the documents filed under seal  
44           should be unsealed pursuant to  
45           this Order, if the nonmovant has  
46           not filed a motion to seal.

47           IT IS SO ORDERED.

48           Dated this 29th of May, 2020.

49             
50           BRENDA WEKSLER

51           United States Magistrate Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on **May 27, 2020**, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the CM/ECF participants registered to receive such service.

/s/ Evelyn Escobar-Gaddi  
An employee of GREENBERG TRAURIG, LLP

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